Draft order laid before the Scottish Parliament under section 82(3)(a) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2007 No.

CRIMINAL LAW

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Incidental, Supplemental and Consequential Provisions) Order 2007

Made - - - -

Coming into force - - 10th December 2007

The Scottish Ministers make the following Order in exercise of the powers conferred by section 82 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007(**a**) and all other powers enabling them to do so.

In accordance with section 82(3)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Incidental, Supplemental and Consequential Provisions) Order 2007 and comes into force on 10th December 2007.

Interpretation

2. In this Order "the 2007 Act" means the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

Breach of bail conditions

3. In section 3(1)(b) (breach of bail conditions) of the 2007 Act (in subsection (4B) to be inserted into section 27 of the Criminal Procedure (Scotland) Act 1995(**b**)), after the words "subsection (1) above" there is inserted "or subsection (7) below".

Late applications in summary cases relating to proof of uncontroversial matters

4. In section 20 (proof of uncontroversial matters) of the 2007 Act, after subsection (2), there is added–

"(3) In section 258 of that Act, after subsection (4C) there is added–

(**a**) 2007 asp 6.
(**b**) 1995 c.46.

"(4D) In summary proceedings, the court may allow an application under subsection (4A) above to be made late if the court is satisfied that a timeous application would not have been practicable."".

Requirement to take oaths

5. In section 67 (appointment of JPs) of the 2007 Act, after subsection (8), there is added–

"(9) Where a person is, by virtue of subsection (7)(b), appointed as a JP under subsection (1), an oath previously taken by the person as required by section 6 of the Promissory Oaths Act 1868 (c.72) (and in accordance with Promissory Oaths Act 1871 (c.48)) in relation to the holding by the person of the office of justice of the peace under the 1975 Act also counts in relation to the person's appointment as a JP under subsection (1).".

6. In section 70 (reappointment of JPs) of the 2007 Act, after subsection (3), there is added–

"(4) Where a person is reappointed as a JP under subsections (1)(a) and (2) (including on a second or subsequent occasion), an oath–

(a) previously taken by the person as required by section 6 of the Promissory Oaths Act 1868 (and in accordance with the Promissory Oaths Act 1871) in relation to the person's appointment as a JP under subsection (1) of section 67, or

(b) which by virtue of subsection (9) of section 67 counts in relation to the person's appointment as a JP under subsection (1) of that section,

also counts in relation to the person's reappointment as a JP by virtue of subsections (1)(a) and (2).".

A member of the Scottish Executive

St Andrew's House,
Edinburgh
2007

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 ("the 2007 Act") which are ancillary to the provisions of the 2007 Act.

Article 3 of the Order amends provisions of the 2007 Act dealing with breach of bail. Section 3(1)(b) of the 2007 Act is amended so that provisions relating to the proof of certain facts in proceedings relating to breach of bail (under section 27 of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act")) will be the same for solemn as for summary cases.

New section 27(4B) of the 1995 Act provides that where the defence does not challenge the prosecution's assertion that the accused–

- was on bail;
- was subject to particular bail conditions;
- failed to appear at a diet; or
- was given due notice of a diet,

that assertion shall be held as admitted.

Under the provisions of the 2007 Act as enacted this would only apply to breaches of bail in summary proceedings where the breach consisted of a failure to attend a diet and/or a failure to comply with a condition of bail. In solemn proceedings this would apply only to proceedings where the breach of bail consisted of a failure to comply with a condition of bail and would not extend to a breach of bail consisting of a failure to appear at a diet for which due notice had been given. This is because separate provision is made in section 27(7) of the 1995 Act to deal with breach of bail in solemn cases consisting of a failure to attend at a diet. The amendment made by this Order supplements these provisions of the 2007 Act by extending their application to solemn cases where the breach of bail consists of a failure to appear.

Article 4 of the Order supplements the provision in section 20 of the 2007 Act which amends section 258 of the 1995 Act. Section 258 makes provision in order to facilitate the agreement of uncontroversial evidence between parties. The amendments made by section 20 of the 2007 Act set down new timescales for the lodging of a statement of agreed evidence and lodging a challenge to that statement in summary cases. The provisions of section 258(4A) also allow applications to the court to have a challenge to a statement of agreed evidence disregarded in circumstances where the court finds such a challenge unjustified. The addition of subsection (4D) to section 258 will give summary courts the power to allow an application under section 258(4A) to be lodged late in circumstances where it has not been practicable to have the application lodged on time.

Articles 5 and 6 make incidental and supplemental provision to sections 67 (appointment of JPs) and 70 (reappointment of JPs) of the 2007 Act. Both articles concern the requirement of JPs to take oaths when they are appointed under section 67 of the 2007 Act or are reappointed under section 70 of that Act. The effect of article 5 is that justices of the peace appointed under the 1975 Act will not be required to take a fresh oath (as required by section 6 of the Promissory Oaths Act 1868 (and in accordance with Promissory Oaths Act 1871)) when they are appointed as JPs under the 2007 Act. The effect of article 6 is that JPs will not be required to take a fresh oath upon reappointment under section 70 of the 2007 Act following the expiry of a 5 year term of appointment.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2007 No.

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£3.00

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under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
40 11/07 19593